

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- v -

JAMES G. MARQUEZ,

Defendant,

06 Cr. 1138 (CM)

BUSEY BANK, N.A., f/k/a  
BUSEY BANK OF FLORIDA,

Petitioner.

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**STIPULATION AND ORDER**

**WHEREAS**, on January 29, 2007, this Court entered a Preliminary Order of Forfeiture as to Defendant JAMES G. MARQUEZ (hereinafter the "Defendant"); under the terms of the Defendant's plea agreement, he agreed to forfeit all of his right, title and interest in certain specific property, including, but not limited to, all proceeds of the sale of the property at 1621 Gaspar Drive South, Boca Grande Isles, PB 29, PG6, Lot #4, Boca Grande, Florida 33921 (hereinafter the "Boca Grande Property"), on the ground that such property constitutes proceeds obtained as a result of the offenses charged in Count One of the Information, and property traceable to such property;

**WHEREAS**, the legal description of the Boca Grande Property is more particularly described as that certain plot and parcel of property known as "Lot 4, Boca Grande Isles, a Subdivision according to the Plat thereof as recorded in Plat Book 29, Pages 4 through 6, of the Public Records of Lee County, Florida, also known as Parcel No.: 14-43-20-09-00000.0040";

**WHEREAS**, as set forth in the Warranty Deed, title to Boca Grande Property is held in the name of James G. Marquez and Mariella Marquez, as husband and wife, subject to the liens and encumbrances listed in the Mortgage (hereinafter the "Mortgage"), held by Busey Bank N.A., formerly known as Busey Bank of Florida, attached as Exhibit A hereto;

**WHEREAS**, on April 3, 2007, Buscy Bank, N.A., f/k/a Busey Bank of Florida (hereinafter the "Mortgagee"), filed a Petition for the Adjudication of Interest in the Boca Grande Property pursuant to 21 USC § 853(n), as holder of a mortgage dated May 27, 2005, in the amount of \$1,150,000.00;

**WHEREAS**, the United States of America (hereinafter the "Government") and Busey Bank, N.A., agree that the Boca Grande Property should be sold promptly to preserve its value pending the final adjudication of third-party claims and the entry of a Final Order of Forfeiture as to the Boca Grande Property;

**WHEREAS**, the Mortgagee has demonstrated to the satisfaction of the Government that the Boca Grande Property is diminishing in value with the passage of time, and as the mortgage is in arrears and interest and penalties are accruing, the amount of equity therein is minimal; and

**WHEREAS**, it is the intention of the United States Attorney's Office to request that any property forfeited in this proceeding be distributed on a *pro-rata* basis to the victims of the offenses described herein, pursuant to 21 USC § 853(i)(1), 18 USC § 981(e)(6) and 28 CFR Part 9;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the United States of America, by and through its attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, Sharon Cohen Levin, Assistant United States Attorney, of counsel, and Gregory J. Spaun, Esq., of Oxman, Tulis, Kirkpatrick, Whyatt & Geiger, LLP, attorneys for Busey Bank, N.A., as follows:

1. The Government hereby acknowledges that the Mortgagee is an "innocent owner" and a "bona fide purchaser", as those terms are defined in the applicable forfeiture statutes, and that

the Mortgagee acquired its interest in the Boca Grande Property as the result of an ordinary commercial transaction;

2. The Government hereby acknowledges that the Mortgagee's interest in the Boca Grande is primary pursuant to the Mortgage, and is superior to the interest of the Government as set forth in the Preliminary Order of Forfeiture entered herein;

3. The Mortgagee will promptly commence and diligently prosecute an action in the State of Florida (hereinafter the "Foreclosure Action") seeking a judgment foreclosing the Defendant's interest in the Boca Grande Property pursuant to the terms of the Mortgage, based upon the Defendant's default in his obligations thereunder;

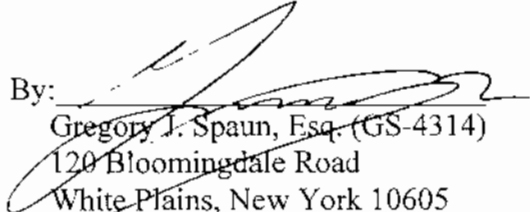
4. The Mortgagee will name the Government as a party defendant in the Foreclosure Action and shall allege that the interest of the Government in the Boca Grande Property arises pursuant to the Preliminary Order of Forfeiture entered herein;

5. In the event that, at the conclusion of the Foreclosure Action and after the satisfaction of the Mortgagee's interest in the Boca Grande Property, there remain any proceeds from the sale which would otherwise be transmitted to the Defendant, the Government may take any and all steps necessary to effectuate the forfeiture of those proceeds pursuant to the Preliminary Order of Forfeiture entered herein;

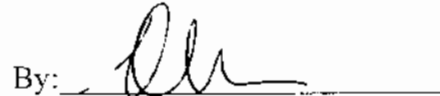
6. In the event that, at the conclusion of the Foreclosure Action, there remain sums due and owing from the Defendant to the Mortgagee pursuant to the terms of the Mortgage, then nothing herein shall prevent the Mortgagee from proceeding against the Defendant, personally, seeking to recover any deficiency.

**AGREED AND CONSENTED TO:**

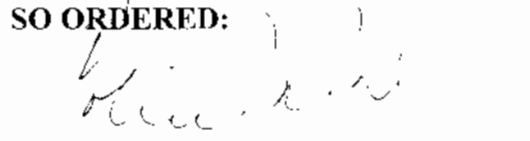
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United States Attorney

By:   
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**SO ORDERED:**

  
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Hon. Colleen McMahon, U.S.D.J.

Date: 9/7/07